

Appl. No. : 09/786,043  
Filed : August 13, 2001

## REMARKS

This response is being submitted in connection with a Request for Continued Examination (RCE), filed herewith. Applicants have amended Claims 110-113. Claims 101-108 are canceled. Accordingly, Claims 110-113 are pending.

Applicants respond below to all the objections and rejections raised by the Examiner in the Final Office Action of May 19, 2003.

### Election/Restriction

Applicants thank the Examiner for pointing out Applicants' inadvertent neglect to cancel Claims 101-108, although in a previous response, Applicants had indicated the status of these claims as "DELETED." Applicants have herewith made their intent explicit by requesting that Claims 101-108 be canceled. In view of the cancellation of these claims, Applicants request that the Examiner withdraw the objection.

### Specification

The Examiner has objected to the use of the indicators "<400>" and <210>." Applicants respectfully point out that the indicator <210> appears only on page 3 of the specification, in a paragraph explaining the meaning of that indicator in the sequence listings. Therefore, Applicants do not believe that this instance of the use of "<210>" is objectionable. Applicants have, however, amended the specification by changing every occurrence of "<400>" to its functionally equivalent "SEQ ID NO:." In view of the amendments, Applicants request that the Examiner withdraw the objection.

### Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 111-113 stand rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite.

With respect to Claim 111, the Examiner has argued that the terms "substantially" and "capable of," in particular, render this claim indefinite. Without acquiescing to the Examiner's position and in order to expedite prosecution and advance the case towards allowance, Applicants have amended Claim 111 and have removed these two terms from the claim.

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Applicants further point out that in the previous amendment to the claims, Applicants had inadvertently deleted the conjunctive “or,” which separated the two alternatives in the claim. Applicants have reinstated the conjunctive by present amendments. Thus, Claim 111 is directed to an isolated nucleic acid molecule comprising a nucleotide sequence as set forth in SEQ ID NO:1 *or* an isolated nucleic acid molecule comprising a nucleotide sequence which hybridizes to SEQ ID NO:1 under medium stringency conditions.

Applicants respectfully submit that the rejection of Claim 112, which was rejected solely because it depended from a rejected base claim, is now moot in view of the amendments to Claim 111. As an aside, Applicants note that the Examiner indicated on page 4 of the Office Action that “Claim 112 depends on claim 11.” Applicants believe this to be an inadvertent typographical error and have assumed the Examiner had meant to say “Claim 111” instead of “Claim 11.”

With respect to Claim 113, Applicants have amended the claim to further clarify that the nucleic acid molecule of this claim comprises the sequence set forth in SEQ ID NO:1.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 112, second paragraph.

#### Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 110-113 stand rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement.

The Examiner has argued that Claims 110 and 112 encompass any variant or fragment of SEQ ID NO:1 that encodes an amino acid sequence 45% identical to SEQ ID NO:2. Applicants have amended Claims 110 and 112 to require that the sequence comprise an ETS domain. Support for this amendment is found throughout the specification, and specifically at, *inter alia*, page 4, line 2. Applicants respectfully submit that the ETS domains are well-understood in the art, as set forth in the present specification on page 1, line 20, to page 3, line 10.

Applicants respectfully submit that those of ordinary skill in the art can readily and without undue experimentation determine whether a particular sequence falls within the scope of the claims. Specifically, the steps utilized to determine whether or not any given polypeptide exhibits the same functional activity of the claimed sequence is a matter of routine procedure when one considers that the typical steps for conducting such an analysis can be achieved, for

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example, by performing gel shift analysis to determine if the molecule in question binds to the same *cis* element on a promoter, if in transfection experiments it transactivates the same target genes and drives expression of those genes in the same directional manner as the claimed sequence. Accordingly, Applicants respectfully submit that the combination of the disclosure in the specification of the importance of the ETS domains and the functional analyses which may be routinely performed in order to further analyze any given molecule, renders the determination of whether or not a nucleic acid molecule of interest hybridizes under medium stringency conditions to SEQ ID NO:1 a matter of routine procedure. One need only refer to any one of a number of standard texts that discuss the parameters which define low, medium, and high stringency hybridization conditions.

With respect to Claim 111, Applicants respectfully submit that in view of the present amendments, deleting the terms "substantially" and "capable of," the Examiner's rejection is now moot.

With respect to Claim 113, Applicants respectfully submit that because Applicants amendments have now obviated the Examiner's rejection of Claim 110, from which Claim 113 depends, the rejection of Claim 113 is now moot as well.

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### CONCLUSION

Applicants have endeavored to respond to all of the Examiners comments and rejections. Applicants respectfully submit that the claims, as amended herewith, are patentable and should be passed to issue. A notice to that effect is respectfully requested.

Applicants have submitted a check in the amount of \$385 for the fee associated with the Request for Continued Examination (RCE) and a separate check in the amount of \$210 for a two month extension of time. If either one of these fees is incorrect, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: March 17, 2004

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